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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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OVERLAND PARK, KS 66251-2100			ART UNIT	PAPER NUMBER
			2151	
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			01/17/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/919,430

Applicant(s)

HANSEN ET AL.

Examiner

John B. Walsh

Art Unit

2151

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6,10-12,14,16,18,20 and 29-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,4-6,10,11 and 30-32 is/are allowed.
- 6) ☒ Claim(s) 12,14,16,18,20,29,33 and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 12, 14, 16, 18, 20, 29, 33 and 34 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,996,067 to Burke et al.

As concerns claims 12 and 29, a service node (figure 3, 42,52,40,50,60); subscriber terminals (figure 7; 12; col. 6, lines 39-40); a switch (40); xDSL lines (column 1, line 66); the gateway coupled to the Internet (column 2, line 19); a gateway (50); a router (figure 6); a bandwidth measurement device (60) coupled to said router and said gateway (fig. 6) and configured for independently determining upload or download data transfer rates between said remote client/terminal (column 3, lines 50-53) and said gateway, a measurement application (column 3, lines 34-41) resident on said bandwidth measurement device, said measurement application determining said upload or download data transfer rates for said bandwidth measurement device; and an applet (column 3, lines 54-61) maintained by said measurement application suitable for download to said remote client; configured for independently determining upload or download data transfer rates between said remote client and said gateway,

wherein determining said upload data transfer rate between said client and said gateway, said downloaded applet generates said data packets (column 4, lines 32-39) originating at said remote client and determining said download data transfer rate between said gateway and said remote client, said downloaded applet determines said download data transfer rate based upon an analysis of said data packets generated by said measurement application upon arrival at said remote client (column 4, lines 32-39); wherein said bandwidth measurement device further comprises a measurement database (col. 3, lines 39-41; col. 8, line 66; col. 9, line 34) coupled to said measurement application, said measurement database maintaining said data collected during measurement of said upstream or downstream data transfer rates for said requesting ones of said plurality of subscriber terminals; a service provider terminal (inherent for technician to have a terminal; col. 8, lines 5-7; col. 8, line 54-col. 9, line 12) coupled to said router, said service provider terminal accessing said data maintained in said measurement database of said bandwidth measurement device through said router; a service provider terminal (column 6, line 65) and said bandwidth measurement device is coupled to the router (figure 3; coupled via the communication connections of the network).

As concerns claim 16, a server (column 4, line 18-test server).

As concerns claims 18 and 20, wherein a web application resides on said bandwidth measurement server, said remote client accessing said measurement application via said web application (column 5, line 35).

As concerns claim and 20, wherein said bandwidth measurement server further comprises a measurement database (column 3, lines 40-41) coupled to said measurement application, said

measurement database maintaining data collected during measurement of said upstream and/or downstream data transfer rates.

As concerns claim 14, said bandwidth measurement device is coupled to a gateway (50; figure 3).

As concerns claim 29, the upload or download transfer rate is compared to the baseline data transfer rate to determine if problems exist (abstract-last 4 lines; fig. 4-218).

As concerns claim 33, distinguishing the upload or download data transfer rate between the remote client/subscriber terminal and the gateway from the upload or download data transfer rate between the remote client/subscriber terminal and the network (column 5, lines 26-30).

As concerns claim 34, when determining said upload data transfer rate between said requesting ones of said subscriber terminals and said gateway, said download applet generates said data packets originating at said requesting ones of said subscriber terminals (col. 5, lines 37-39; col. 6, lines 10-25) and when determining said download data transfer rate between said gateway and said requesting one of said subscriber terminals, said downloaded applet determines said download data transfer rate based upon an analysis of said data packets generated by said measurement application (col. 5, lines 37-39; col. 6, lines 10-25) upon arrival at said requesting ones of said subscriber terminals.

Response to Arguments

3. Applicant's arguments filed December 12, 2007 have been fully considered but they are not persuasive.

The applicant argues Burke does not disclose "a server provider terminal accessing said data maintained in said measurement database through said router" as recited in claim 12. The claims have been given their broadest reasonable interpretation and Burke discloses the technicians work with the customers to perform the test and notify maintenance or the service provider (see Fig. 4; col. 9, lines 5-10). It would be inherent, necessary, for the technician to have a terminal or the service provider to have a terminal for accessing the test results and performing their functions.

The applicant argues Burke does not disclose "a baseline data transfer rate determined during an initial access of said service node by said remote client" as recited in claim 29. The claims have been given their broadest reasonable interpretation and Burke discloses this limitation at least at Figure 4, 218; col. 8, lines 54-57; and col. 8, line 64.

Allowable Subject Matter

4. Claims 1, 2, 4-6, 10, 11 and 30-32 are allowed.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

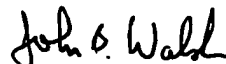
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John B. Walsh whose telephone number is 571-272-7063. The examiner can normally be reached on Monday-Thursday from 7:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on 571-272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


John B. Walsh
Primary Examiner
Art Unit 2151